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BAIL.

The right to personal liberty is the bed-rock and foundation of the law of personal rights. It is absolute ; of indeterminate incidence. It is most closely connected with the personality of the individual. Or, if you would insist on rights being the legal garment of a person, it is the flesh and bone with which the self and soul of a juridical person may be said to be clothed. It is of the essence ; essential. Nearer men's hearts than political liberty, dearer often than the very life-blood, more cherished, aye, than the breath of life, it is a right, sacred of orbit and supremely jealous of infringement. It is innate, born at the moment of one's birth. In the normal person, it is unlimited in its incidents, and incapable of suspension, except partially by voluntary and temporary waiver, by statutory forfeiture.

Incident to the law of personal liberty, and arising out of it as a remedial right, is the law of bail or permissive, conditional and restricted, liberty, in case of forfeiture by the operation of a penal statute. This remedial right is no less sacred than the antecedent right of personal freedom ; and I shall make no more apology for taking up my pen to-day than to refer my readers to the administration of Jedburgh justice by our Police and Magistracy, and even by the Judiciary. I do not know if Cowper's Law is on the Statute Book for the Punjab, nor have I been able to ascertain whether the Sessions map for Pindi indicates a local jurisdiction conterminous with Jedwood, but it staggered all judicial instincts to be told that a host of respectable lawyers, whose parole would be acceptable in any quarter of the civilized world, were refused bail by the Court of Sessions and by the Chief Court ; it was thought there might be evidence forthcoming to implicate them in a case of rioting. And Mr. MARTINEAU, the

Special Magistrate appointed to try the case, took quite an age to determine that it was the other way about. Long live ABINGDON. For in the end, the trying Magistrate came to the conclusion that there was absolutely no justification for the prosecution and that the evidence for the prosecution was suspicious, if not fabricated.

In my humble opinion the learned Sessions Judge failed to exercise a jurisdiction vested in him by law. Not uncommonly does one meet with the statement made by a Sessions Judge that he has no jurisdiction to admit a prisoner to bail after committal. Let me, in all humility, examine the foundation of this jurisdiction, and for that purpose attempt an analysis of the whole law on the subject.

Bail.—It is customary to commence with the philology of the term:—

The word comes from Latin through the medium of French. The accepted derivation is from. Old French *bailler*—a law term,—to secure, to keep in custody. In old records when the accused could not find bail an entry is found, 'Let the prison be his bail.'—Norman F. *bailler*,—to hand over; *Cf.* also F. *bail*, an administrator, from Lat. *bajulus*, one who bears burdens; Lat. *bajulare* is used generally and primarily to mean: (i) to bear a burden, to take charge of a child; also (ii) in the sense of making one a bail or keeper of the thing handed over, giving it into his bail or control. *Cf*, also Lat. *Collium*, Eng. Bailiff, Old bailey. The Old French sense of securing is noticeable in the Australian '*bail up*,' to secure, to disarm before robbing, a dirty tribute from Australia this, which English undefiled has disdained to accept. To bail is to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called *bail*, because the party arrested or imprisoned is delivered into the friendly custody of the persons who bind themselves for his forthcoming, in order that he may safely be protected from prison.

Bail are sureties taken by a person duly authorised, for appearance at a certain day and place, to answer and be justified by law. (Hale, 96; Archbold 110). The word, it will be noticed, is never used with a plural termination.

Kinds of bail:—The law of England recognises several kinds of bail, at common law and by statute. They are not all in matters criminal. Here is a brief enumeration.

(1) Common bail *or* bail below—is given to the sheriff, after arresting a person, on a bail bond entered into by two sureties on condition that the defendant appear at the day and such place as the arresting process commands.

(2) Special bail *or* bail above, otherwise called bail to the action, are persons who undertake generally after appearance of a defendant that if he be condemned in the action he shall satisfy the debt, costs and damages, or render himself to the proper prison, or that they will do it for him.

(3) Bail in error, being recognisances for the satisfaction of decrees, given for the purpose of staying execution thereof pending appeal.

(4) Bail on an attachment, when defendant is arrested upon a writ of attachment, he is brought before the Court and sworn to answer interrogatories and then committed unless, by leave of Court, he enter into a recognisance with sureties for his appearance in Court from day to day to answer interrogatories concerning such matters as may be objected against him.

(5) Bail in actions of ejectment under 15 and 16 Vict. Ch. 76, S. 213-16, obtainable from a tenant holding over.

(6) Bail on appeal against decisions of the courts refusing or granting new trials; 17 and 18 Vict. Ch. 128, S. 38.

(7) Bail on removal of a cause from an inferior Court.

Bail and Mainprise:—The ancient law of England recognised a distinction between bail and mainprise. It is thus described by Lord HALE: "Bail and Mainprise are used promiscuously oftentimes for the same thing, and indeed the words import much the same thing, for the former is *traditus J. S.* and the other is *manucaptus per J. S.* But yet in a proper and legal sense they differ. (1) Always mainprise is a recognizance in a sum certain, but bail is not always so. (2) He that is delivered *per manucaptionem* only is out of custody; but he that is bailed is, in supposition of law, still in custody, and the parties that take him to bail are in law his keepers and may reseize him to bring him in."

The difference between the use of the two writs given in HALE is rather obscure. The distinction, too, has long since become obsolete, though WHARTON in his Law Lexicon still gives the following differentiation; "Mainpernors are merely a person's sureties who cannot imprison him themselves to secure his appearance, but bail may, for they are regarded as his gaolers to whose custody he is committed and therefore they may take him upon a Sunday and confine him until the next day, and then render to the proper prison."

Our Law and English Law: -This historic fossil of English law is, however, of interest to the Indian lawyer only as being the stock from which his law of bail is derived. For Chapter 39 of the Code of Criminal Procedure, in which the law of bail has been sought to be crystallised, is indicative of a policy of law different in its origin and incidents from the English law of bail.

The admitting to bail in this country does not even in theory consist in the delivery (or bailment) of a person to his sureties, on their giving security for his appearance; he is not supposed to be in their friendly custody; they cannot reseize him if they have reason to suppose that he is about to flee—they can merely apply to a magistrate to discharge their bond, though they do not obtain their discharge until the accused either appears voluntarily in court or else is brought upon a warrant; and consistently with this our statute book has not penalised attempts to rescue a person from the custody of his bail, for there is no custody to rescue from. In a fit case the magistrate would discharge the accused on his personal recognisance.

In England, as in this country, the bail must be of ability sufficient to answer for the sum in which they are bound. They, however, need not be house-holders, and here they are not usually such. The magistrate or judge need only look to the pecuniary sufficiency of the bail, and for this purpose may examine the proposed bail upon oath as to his means. By the law of England no person convicted of any crime by which he had become infamous is allowed to be surety for any person charged or suspected of an indictable offence—Edwards, 2 R. R. 427. It is deemed inexpedient to accept the solicitor of the accused as bail for his client—Scott-Jarvis, Q. B. D., *Times* 20th November 1876, Douglas 371—or a person who has been indemnified by the accused

Persons who are themselves in custody cannot be bail. Married women owning no separate estate could not be accepted. These limitations find no place either on our statute book or in the reported decisions of our High Courts, though some cognate rulings are to be met with in respect of sureties for the prevention of crimes. But one has a shrewd suspicion that these last have been imported from the English law of bail, for neither in English law nor in the law of this country has suretyship been treated as conferring any dominion over the accused or even as creating any relation between the parties. *Reg.* v. *Badger.*[1] An infant cannot stand bail, but that is on the general law of capacity of parties. It is common knowledge again that Mukhtears, who in this country occupy a position akin to that of solicitors, are accepted as bail in almost all cases coming on before our inferior courts ; and the scruples of a magistrate learned in English law are often met by offering a Mukhtear who is not in the case. The practice, though not unattended with evil, has been found to be a success. It generally attains its end of ensuring the attendance of the accused. And, in the absence of such a practice, people would often go without bail in cases which are clearly replevisable both upon the nature of the offence and upon their merits.

History of the law in England. :—Before entering upon a broader discussion of the subject, I shall make a rapid review of the development of the right, its recognition and administration by English Courts. The right to be bailed in certain cases is as old as the law of England itself, and is explicitly recognised by the earliest writers. When the administration of justice was in its infancy, arrest meant imprisonment without preliminary inquiry till the Sheriff held his town at least, and, in more serious cases, till the arrival of the Justices, which might be delayed for years, and it was, therefore, a matter of the utmost importance to be able to obtain a provisional release from custody. The right is recognised in curt and general terms by GLANVILLE. And BRACTON in his treatise *De Corona* lays down the principles of the administration of the law which to this day continue to be the guiding lights of all Courts in England and in India. He says that the Sheriffs ought to exercise a discretion in bailing accused persons, having regard to the importance of the charge, the

1. 4 Q. B. 468 Dav. and M. 375.

character of the person and the gravity of the evidence against him.

The Sheriff was the local representative of the Crown, and in particular he was at the head of all the executive part of the administration of criminal justice. In that capacity he arrested and imprisoned suspected persons, and, if he thought proper, admitted them to bail. The discretionary power of the Sheriff was ill defined and led to great abuses which were dealt with by the Statute of Westminister the First (3 Edw. I C. 12—A.D. 1275). This was for 550 years the main fonndation of the law of bail This Statute, commonly known as the Statute of Bail, recites that Sheriffs have 'incontinent let out by replevin such as were not replevisable, and have kept in prison such as were replevisable because they would gain of the one party and grieve the other.' It also recites that before this time it was not clearly determined which persons were replevisable and which not, and proceeds to enact by defining the same. In 1444 Sheriffs were forbidden to hold office for more than a year.

Between 1275 and 1444, however, the Sheriffs' Powers had been to a great extent transferred to the Justices of the Peace in whom the power of admitting prisoners to bail was vested by a series of statutes. The way in which the later statutes are framed seems to favour the supposition that the Justices at all events could, in the first instance, admit to bail only persons indicted before them in their sessions. The 4 Edw. 3 C. 1 (1330) provided that persons indicted or taken by the keepers of the peace should not be let to mainprise by the Sheriffs. The Statute of 34 Edw. 3 C. 1 (1360) gave the Justices power to bail in very general terms. In 1486 the power of bailing was made exercisable only by two justices who should let prisoners to bail till the next sessions or gaol delivery. This measure formed a part of the rigorous administration of justice by which Henry VII restrained the disorders arising from the Wars of the Roses. It is contained in the Statute of which the Act relating to the Star Chamber formed a part. It shows how great was the power committed to the Justices and what grievous consequences might follow from its abuse. Under the earlier law any one Justice of the Peace might let any offender to bail on any security and the result might be, and often was, the complete immunity of the offender. To require the presence of two Justices on the occasion was probably some, though no very great, security.

With the Statute of Philip and Mary, (Ch. 13) originated the system of preliminary inquiry which has come to be in practice one of the most important and characteristic parts of the whole system of procedure. It provides that, whenever a prisoner is bailed, the depositions of the witnesses are to be taken by the Justices and returned to the Court.

All the Statutes above referred to have been repealed and superseded by 11 & 12 Vict. C. 42, S. 23, which is the law now in force. This enactment provides that the committing Justice may, in his discretion, admit to bail any person charged with felony, or with any of the common misdemeanours, except libel, certain conspiracies, unlawful assembly, night poaching and seditious offences. In these cases and in misdemeanours created by special Acts, (by way of sanction to the provisions of particular administrative measures), bail cannot be refused. In cases of treason no bail can be taken except by order of a Secretary of State or by the High Court. A noticeable feature of the Statute is that it contains a series of provisions as to admitting to bail after committal, persons who, in the opinion of the committing Magistrate, ought to be bailed if they can find sufficient sureties.

Such, in brief, is the history of the existing state of English law of bailing by Justices of persons accused or suspected of crimes. The Sheriff, on executing a writ of attachment for the security of the peace, may take bail on the terms stated in the body of the writ, or an order to find bail may be made on a return of *cepi corpus*. Where the Sheriff executes a writ of attachment for contempt, he may admit his prisoner to bail. The Sheriff's other powers and duties as to bail in criminal cases are superseded in practice by those of the Justices.

The power of thesuperior Courts to bail in all cases whatever, even high treason, has no history. I do not know, indeed, that it has ever been disputed or modified. It exists in the present day precisely as it has always existed from the earliest times. The only matters connected with it which need be noticed here are some of the provisions in the Habeas Corpus Act of 1679 (31 Chas. 2, C. 2). This Act provides that any person committed to prison "for any crime, unless for treason, or felony plainly expressed in the warrant of commitment," may obtain a writ of habeas corpus from the Lord Chancellor or any

Judge of the common-law Courts. The writ being served on the gaoler, and certain conditions being complied with as to expenses, a return must be made to the writ within three days. Upon the return, the Judge is required to admit the prisoner to bail.

To avoid expense and inconvenience it is now the practice in almost all cases, instead of applying for a Writ of Habeas Corpus, to apply for a summons before a Judge in Chambers to show cause why the prisoner should not be admitted to bail before a Justice of the Peace. If the order is made, upon its being produced to the Justice, he will admit the prisoner to bail. No summons to show cause before a Judge in Chambers for bail in felony would be issued without the leave of a Judge upon an *ex parte* application. The application may, however, be opposed by counsel, and affidavits may be used in answer to the application. Proceedings in Chambers are nearly the same as in Court.

Thus the High Court of Justice exercises in the King's Bench Division the powers as to bail of the old Court of King's Bench; 36 & 37 Vict., C. 66, Ss. 16, 33, 34; and the practice is not altered by the Judicature Acts—see 38 & 39 Vict., C. 77, S. 19. The jurisdiction is practically unlimited, for the High Court may admit to bail on any criminal charge whether for treason, felony or misdemeanour. This jurisdiction does not extend to persons imprisoned in execution of sentence unless there is an appeal pending whether by writ of error *certiorari*, or case stated on indictment, or appeal to Quarter Sessions, or by case stated to the High Court from summary convictions. In all cases of misdemeanour the High Court is theoretically bound by the Habeas Corpus Act to grant bail, although as to many misdemeanours, Justices of the Peace would seem to have discretion. The powers of the High Court as to bail are the same, whether the case is depending there or in an inferior Court. Where a writ of error is obtained after a conviction for misdemeanour, execution is not stayed, nor is the convict released from prison until he is permitted to be bound by recognisance of bail.

There is no appeal from a refusal by a Judge in Chambers to grant bail or Writ of Habeas Corpus, either to a Divisional Court or to the Court of Appeal; but the applicant has a right to renew his application to a Divisional Court, and if it be for a Habeas

Corpus may go the round of the High Court and to the Lord Chancellor ; *Ex parte Wideman*[1]; *Ex parte Coppin*[2].

Jurisdiction.—In India power to admit to bail in certain cases has been extended to all Courts and even to officers in charge of Police stations. These are cases in which bail is of right. It does not, however, appear to be quite clear whether a Magistrate may bail any person not indicted before him or forwarded to him under custody under S. 107, Cr. P. C. The powers of our Magistrates seem to be limited in this respect ; at least, that is how I read S. 496 of the Code of Criminal Procedure. But so long as the police persist in the practice, often condemned by the High Court, of taking confessing prisoners before Subordinate Magistrates for the purpose of putting them down to particular versions of their case the extension of the jurisdiction will always be attended with the risk of its being abused as an inducement for making statements which may be anything but voluntary. From what glimpses we get from Stephen into the history of jealous legislation in this connexion in England we need be in no great hurry to ask for the removal of a limitation as the event may be not unattended with evil. The change will be valued as bringing handy multiplied guards to personal liberty but it is hoped that the change will come not by itself but in the train of mightier and more searching changes in other quarters.

Bail of right:—Bail in misdemeanour is said to be of right at common law; *Spilsbury*[3], *Badger*[4]. Bail is compulsory in 'bailable' offences. Refusal or delay by any Judge or Magistrate to bail any person bailable is an offence against the liberty of the subject. In England, besides being an offence at Common Law, it is a violation of the Habeas Corpus Act (1679) and of the Bill of Rights (1 Will & M.) The word in S. 496 Criminal Procedure Code is 'shall'—*Raghunandan*[5] ; *Kokoor Sing*[6]. The section, as this case will show, embraces a wider scope of cases than merely bailable offences, for the terms are "*any person other than a person accused of a non-bailable offence.*" The duty of a Magistrate in respect of admitting a prisoner to bail is judicial, and not merely ministerial, and therfore an action will not lie

1. (1848) 12 Jur. 719.
2. (1866) L. R. 2 Ch. 47.
3. (1841) 2 Q. B. 615.
4. (1843) 4 Q. B. 468.
5. (1904) 8 C. W. N., 779.
6. (1877) 1 C. L. R., 130.

against him without proof of malice for refusing to admit to bail a person replevisable under the Code; vide *Linford* v. *Fitzroy*,[1] *Manikam Mudali* v. *Q.*,[2] also *Paley*, p. 20; *Badger*[3], *Parankusum*[4], *Osborne* v. *Gough*[5]. For the same reason, again, the order of a Magistrate refusing bail is subject to revision by the High Court. The District Magistrate, however, is not competent to revise an order made by a Subordinate Magistrate If he finds the order improper or unduly lenient, the proper procedure for him to adopt is under S. 438, Criminal Procedure Code, by way of reference to the High Court. Pending reference the accused may, at the discretion of the District Magistrate, be admitted to bail, not in revision but as an original order in the case. *Sadasiv*[6], (case under S. 497 Criminal Procedure Code); see also *Cocha Rai.*[7]

Principles on which bail is granted:—In 'non-bailable' cases our Courts are vested with a discretionary jurisdiction. The discretion must be judicially exercised. The regulative canons have been laid down by Lord Chief Justice RUSSELL and other high authorities. In *R.* v. *Rose*, [8] Lord RUSSELL observed that bail should be taken whenever practicable. Bail is not to be withheld merely as a punishment. The requirements as to bail are merely to secure the attendance of the accused at the trial. The same principle has been reiterated in *In re Robinson*[9], and *R.* v. *Scaife*[10], *In re Johur Mull*[11]; the proper test of whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. The test should be applied by reference to the following considerations:—

(1) The nature of the accusation—*Barronet*[12]; *Butler*[13].

(2) The nature of the evidence forthcoming in support of the accusation; the character or behaviour of the accused is said to be irrelevant—*Robinson's* case, *Butler's* case, *supra.*

(3) The severity of the punishment which conviction will entail.

1 (1849) 13 Q. B. 240.
2. (1882) I. L. R., 6 Mad. 63
3. (1843) 4 Q B. 468.
4 (1865) 2 M. H. C. R. 396.
5. (1863) 3 B. and P 550
6. (1898) I. L. R 22 Bom. 519.
7. (1874) 6 N. W. P. 366.
8. (1891) 17 Cox, 717.
9. (1854) 23 L. J. (Q B.) 286.
10. (1841) 10 L J. (B. C.) 144.
11. (1906) 10 C. W. N. 1093.
12. (1852) 1 E. and B. 1;
13. 14 Cox 530.

(4) Whether the sureties are independent, or indemnified by the accused. Butler (*supra*); *Hermann* v. *Jenchner*[1], *Consolidated Exploration Co.* v. *Musgrave*[2], see *contra* per Martin, B., in *R.* v. *Broome*[3], followed by Recorder Fulton in *R.* v. *Stockwell.*[4]

In capital cases:—It is not usual to grant bail on charges of murder; *Re Barthelomy*[5]; but see the observations of MITRA, J., in *Johur Myll's case.*[6] *In serious offences* bail will not be granted after indictment found, *Chapman*[7], or as our legislature has put it, no person accused of a non-bailable offence should be released on bail "if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused." These words have been interpreted to mean where a very strong *prima facie* case has been made out. Commitment would seem to furnish such a case. But even after commitment bail is of right in bailable offences. S. 220, Criminal Procedure Code, makes all orders of commitment into custody subject to the provisions of the Code as to bail. Whenever a Magistrate commits the accused to take his trial, at the High Court or Court of Sessions, for a bailable offence, he should admit the accused to bail, unless he thinks fit, instead of taking bail, to discharge him on his own bond, for his appearance (S. 496, Criminal Procedure Code). In a non-bailable case S. 497, Criminal Procedure Code, would be a bar to the Magistrate's taking bail after committal. But the Sessions Judge has plenary powers under S. 498, Criminal Procedure Code, and in a case in which there is no apprehension that the accused will abscond the Court of Sessions should make prompt orders as to bail, taking care to see that the bail demanded is fixed with due regard to the circumstances of the case and is not excessive, for bail, let me repeat, is not intended to be punitive but only to secure the attendance of the prisoner at the trial.

Must proceed on recorded evidence:—A Magistrate ought not to commit an accused to custody where there is no recorded evidence, in the expectation of evidence turning up—*Mohesh.*[8] The High Court would always demand a record of the evidence to satisfy itself that bail has been properly granted or refused. The

1. (1885) 15 Q. B. D. 561.
2. (1900) 1 Ch. 37.
3. 18 L. J., O. S. 19.
4. (1902) 66 J. P. 376.
5. (1852) 1 E. and B. 8.
6. (1906) 10 C. W. N. 1093.
7. (1838) 8 C. and P. 558.
8. (1870) 4 B. L. R, App. 1.

prisoner should be promptly brought before a Magistrate, and the Magistrate has no authority further to detain him in custody or to remand him to prison without some reason made manifest to him either in the shape of sworn testimony, or in some other form, which can be put on the record. The accused has a right to have the evidence against him recorded at as early a period as possible, and the fact that there is, or may be, a great body of evidence forthcoming against him is not a ground for detention for an inordinate period—*Abdul Kadir*[1]; *Manikam Mudali.*[2] In this last case evidence was available, but it appeared necessary to the Magistrate to defer the examination of the witnesses in order that further evidence might be produced so as to enable the Magistrate to hold a continuous inquiry, once it had commenced. For this purpose it was held legal to remand the prisoner to custody for a short period, as this was a 'reasonable cause' within the meaning of S. 344, Criminal Procedure Code (S. 194 of the old Code.)

On the first occasion that an accused person is produced it is not necessary to go fully into the charge: it is ordinarily sufficient to show by the evidence of an officer of the Police that the police are in possession of information, which they believe to be reliable, that an offence has been committed, and the accused person was concerned in its commission. But when the accused is brought up after a remand, some direct evidence of the connexion of the accused with the crime should be required, to justify the Magistrate in refusing bail, and with each remand the necessity for the production of implicating proof becomes more strong—*Ponnusami.*[3]

The classification of offences into bailable and non-bailable does not fetter the discretion of Magistrates in granting bail even in non-bailable cases, unless and until the evidence on the record makes the guilt of the accused patent. To refuse bail on the ground urged by the Police prosecutors that they may find it more difficult to produce evidence is to surrender the Magistrate's jurisdiction to the police. To send a man into custody before his guilt is proved is to subject him to a worse form of incarceration than he would have to undergo in the event of a conviction, besides conferring on the prosecution an undue and unfair advantage. This procedure has the

1. (1873) 11 B. L. R. App. 18. 2. (1883) I. L. R. 6 Mad. 63.
3. (1883) I. L. R. 6 Mad. 69.

effect of seriously prejudicing the accused in making a proper defence and also, let me repeat, of punishing him before his guilt is established.

Circular of the Home Secretary.—I take the liberty of reproducing here the circular issued in this connexion by the Home Secretary to the Clerks to the Justices in England. I would preface it merely with the remark that the principle applies with greater force in India where the poorest man has his stakes and has ties of hearth and home to prevent him from absconding.

"*Home Office, Whitehall,*

August 6, 1906.

"SIR,

"I am directed by the Secretary of State to say for the information of the Justices that he has had under his notice, from time to time the fact that persons committed for trial at the assizes or quarter sessions are frequently detained in prison for long periods before being brought to trial. After consultation with the Lord Chancellor and the Lord Chief Justice, he thinks it right to bring the matter before the Justices of the Peace throughout the country and to urge them to use more freely the discretion vested in them as to the admission of defendants to bail. When a person who is charged with a minor offence appears to have little or no means, and is not believed to belong to the criminal vagrants or homeless classes, the Justices should generally, in the Secretary of State's view, grant the accused his release pending trial, either on his own recognisances, or on bail in such small amount as he may reasonably be expected to find. Such persons as are here contemplated are not of the class who would readily desire to evade justice by leaving their homes and escaping elsewhere; their lack of means would make it difficult for them even if they wish to do so; and if they make the attempt the risk that they might succeed in altogether evading the vigilance of the police is probably not very great. If there is in some cases a risk that the interests of justice might possibly suffer by reason of an increased readiness to grant bail, the object of diminishing the number of cases in which innocent persons are imprisoned is, in the Secretary of State's opinion, of so great importance that the risk should be taken. If the present practice

of the Justices of your bench is not in accordance with the principles indicated in this letter Mr. Gladstone would strongly urge that these principles should henceforward be adopted in dealing with cases which may come before them.— I am, Sir, Your most obedient servant, M. Chalmers."

In Mr. Chalmers our readers will recognise our late Law Member of the Governor-General's Council. A few words more in this connexion, and I pass on to the Police officers.

Magistrate to decide sufficiency of bail.—In the leading case of *Gayitri Prasunno Ghoshal*[1] famous for other dicta, Mr. Justice WILSON pointed out the impropriety of the practice, only too common in this country, of leaving to the Police the decision as to the sufficiency of bail when bail has been ordered by the Court. " This is clearly contrary to what is intended by the law. If the Court admits a man to bail, it is, of course, at liberty to call for a report from the Police as to the sufficiency of the bail, but the duty of deciding as to its sufficiency or otherwise is with the Court itself, and not with the Police."

" If such duties are irregularly entrusted to the Police, two dangers are likely to arise, first, a Police officer may sometimes be unscrupulous enough to take advantage of the power entrusted to him, for the purpose of extortion. On the other hand the same irregular practice may lead to another evil, only second to the first, namely the bringing of false charges against Police officers. If the Police were limited to their proper functions both these dangers might be diminished, if not wholly avoided."

These salutary observations made twenty years ago seem, however, to have fallen flat on our inferior Criminal Courts. If the cogency of my Lord's reasons does not persuade our Magistracy to a proper and lawful exercise of their jurisdiction, the name of Sir ARTHUR WILSON will not conjure them to it.

Principle recognised in America.—"Where there is so great an approximation to certainty as to leave no doubt in the minds of the court, that the accused will not attempt to abscond from justice, I will not say" (said PAGE J.) " that there may not be cases where it would be a proper exercise of judicial discretion to admit to bail, if the party can give in the amount with the sureties required, even if the question of guilt did not stand indifferent on the *exparte*

1. (1888) I. L. R. 15 C. 455.

evidence produced on the part of the people. For allowing bail under such circumstances would be in consonance with the principle that the object of such imprisonment before trial is not the punishment of the accused, but to secure his forthcoming to stand his trial, and abide the punishment to be inflicted in case he shall be convicted"—*People v. Van Horne* [1].

S. C. Lahiri [*To be continued.*]

NOTES OF INDIAN CASES.

Kanemar Venkappayya *v.* **Krishnacharya**—I. L. R. 31 M. 161.—**Durbar Khachar** *v.* **Khachar Harsur**—I. L. R. 32 B. 348.—It was pointed out by *Stuart* C. J. that the expression 'pious duty' in a system of law is peculiar. It is difficult to put it on a separate and distinct footing of its own, either in connection with legal liability on the one hand, or legal immunity on the other — *Mahabir Prasad* v. *Basdeo Singh.* [2] The numerous decisions that have since been pronounced on the subject of the son's liability to pay his father's debts have not, in any measure, contributed to the development of any consistent and intelligible principle on which the liability or immunity is to be based. On the other hand, the constant repetition of the time-honoured words 'illegal' and 'immoral' has only tended to obscure the subject. The general observations made in *Natasayyan v. Ponnusami*[3] are concurred in by the learned Judges of the Calcutta High Court in *Peari Lal Singh* v. *Chandi-Charan Singh*,[4] but in *Mc. Dowell and Co.* v. *Raghava Chetti*[5] Sir *Arnold White* C. J. and *Subrahmanya Aiyar* J. guarded themselves against being understood as expressing entire concurrence with all the observations in *Natasayyan* v. *Ponnusami*[2] with reference to the general question of the son's liability under the Hindu Law. The distinction between *Mc Dowell and Co's* case[4] and the case now under notice is by no means obvious. How far off we still are from arriving at any definite and general legal principle may be judged from the attempt to state one in the latest Bombay case. The learned Judges can only say that "the son is not to be be held liable for debts which the father ought not, as a decent and respectable man, to have incurred."

1. 8 Barb. 158.
2. (1884) I. L. R. 6 A at p. 240.
3. (1892.) I. L. R. 16 M. 99.
4. (1907) 5 C. L. J. 80.
5. (1903) I.L.R. 27 M. 71.

Vedapalli Narasimham v. Dronam Seetharama Murthy.—I. L. R. 31 M. 163;—As the learned Judges hold that Art. 139 of the Limitation Act does not apply to the case, their observations on *Adimulam* v. *Pir Ravuthan*[1] are only *obiter*. The observations on the point in *Kanthappa* v. *Seshappa*[2] may also be regarded as *obiter*, seeing that at the end of the judgment *Farran* C. J. remarks that it is not necessary actually to decide the point in that case. *Chandri* v. *Daji Bhan*[3] is, of course, a decision on the point. The question is, what is a *determination* of the tenancy within the meaning of Art. 139. It is, perhaps, not legitimate to take into account the provisions of a later enactment—the Transfer of Property Act. As admitted by the learned Judges of the Bombay Hight Court the point is not free from difficulty, and should the question arise for decision in this Court it may have to be considered by a Full Bench.

Sambasiva Aiyyer v. Venkateswara Ayyar.—I. L. R. 30 M. 356 and 31 M. 179:—We have no hesitation in agreeing with the majority. Even in the light of the earlier authorities, the instrument in question must be regarded as one of the clearest cases of an absolute gift; and judged by the principle of *Surajmani* v. *Rabi Nath Ojha*[4] it cannot possibly be held to be anything less. It seems far fetched to suggest that the words "with the rights of gift, sale &c." are not used in their ordinary sense but are an unmeaning reproduction of some words of the Permanent Settlement Regulation—especially when the case is not one relating to Zemindari lands.

Babu Singh v. Bihari Lal.—I. L. R. 30. A. 156.—While not quarrelling with the decision on the facts of the particular case, we are unable to agree with the learned Judges in their dissent from *Jamna* v. *Nain Sukh*[5] and from the dictum in *Maharaj Sing* v. *Balwant Singh*[6]. Nor are we able to agree with *Debi Dat* v. *Jadu Rai*[7] in so far as it decides that *Jamma.* v. *Nain Sukh*[5] must be taken to have been overruled by the Full Bench in *Badri Prasad.* v. *Madan Lal*[8] (see *Maharaj Singh.* v. *Balwant Singh*[6]. We may also point out that, so far as the Madras High Court is concerned, *Debi Dat.* v. *Jadu Rai*[7] has

1. (1885) I. L. R. 8 M. 424.
2. (1897) I. L. R. 22. B. 893.
3. (1900) I. L. R. 24 B. 504.
4. (1907) I. L. R. 30 A. 84 : P. C.
5. (1887) I. L. R. 9 A. 493.
6 (1906) I L. R. 28 A. at p. 541.
7. (1902) I. L. R. 24 A. 459.
8 (1893) I. L. R. 15 A. 75.

been doubted by the Full Bench in *Venkatramanay Pantulu* v. *Venkataramana Doss* [1]

It appears to us impracticable to lay down any inflexible rule as to the onus of proof in all cases in which the question of the son's liability arises. Much will depend on the nature and frame of each suit. That the learned Judges of the Allahabad High Court have overlooked this is evident from the reliance they place on the observations in *Karan Singh* v. *Bhup Singh.*[2] That the onus of establishing the plea of immorality or illegality lies on the son has never been doubted. But this is not the *only* plea which a son can successfully set up. Where in *satisfaction of a debt* family property has been sold by the father, or in execution against him, and *has passed out of the family*, the son seeking to recover his share of it can, no doubt, succeed only on proving the illegality or immorality of it—*Girdharee Lal* v. *Kantoo Lal.*[3] And, likewise, in a personal action by a creditor to recover a debt due from the father and in execution proceedings connected therewith, the plea of illegality or immorality is the only substantive defence open to the son—*Karan Singh* v. *Bhup Singh.*[2] But the position of the son as a *defendant* in a suit by the father's mortgagee to enforce the mortgage against the son's share also is very different. In the view that the rule as to the necessity for 'antecedent debts' applies as much to mortgages as to sales by the father (see *Venkataramanaya Pantulu* v. *Venkatarama Doss*[1]; cf. also *Maheswar Dutt* v. *Kishun Singh*[4], the mortgage, as such, may be inoperative as against the son on account of the absence of any antecedent debt justifying the mortgage, and no question *need be* raised in such a case as to the purpose of the mortgage loan. *Jamna* v. *Nain Sukh*[5] belongs to this class of cases, and it was there laid down that the mortgagee should prove 'either that the money was obtained by the father for a legal necessity or that he made such reasonable enquiries as would satisfy a prudent man that the loan was contracted to pay off an antecedent debt or for the other legal necessities of the family.' (See also *Chinnaya* v. *Perumal*[6]; *J.* N. *Tata* v. *Kashinath*[7]). The correctness of this rule

1. (1905) I. L. R 29 M. 200.
2 (1904) I L. R. 27 A. 17.
3. (1874) L. R. I. I. A. 321.
4. (1907) I. L. R. 34 C. 184.
5. (1887) I.L.R. 9 A. 493.
6. (1889) I. L. R 13 M. 51.
7. (1901) I. L. R. 25 B. 329.

and the propriety of the distinction drawn between the two classes of cases above referred to are accepted in *Maharaj Singh* v. *Balwant Singh*[1] and by the Calcutta High Court in *Kishen Pershad* v. *Tipan Pershad*[2], and there is nothing in *Bhadri Prasad* v. *Madan Lal*[3] or in *Karan Singh* v. *Bhup Singh*[4] that is in any way inconsistent with this view. But, though the. mortgage may not be binding on the son, the creditor may, as in the Calcutta case, claim a *money decree* against him, and this can be resisted only on the plea of immorality. In *Kishun Lal* v. *Garurudhwaja Prasad*[5] the question of antecedent debts does not seem to have been raised at all, and the learned Judges, therefore, referred only to the plea of immorality,

With reference to *Nanomi Babuasin* v. *Modhun Mohun*[6] and *Bhagbut Pershad* v. *Girja Koer*[7] we may draw attention to the observation of the learned Judges of the Calcutta High Court in *Kishen Pershad* v. *Tipan Pershad*[2], that these decisions do not lay down any rule inconsistent with or materially different in principle from what is embodied in the earlier decisions of the Judicial Committee.

Gangu v. Chandrabhagabai.—I. L. R. 32 B. 275.— The learned Judges have, we think rightly, held that *even if* the husband should be regarded as disentitled to succeed by reason of his guilt, the disqualification does not extend to his widow. But they refrain from deciding whether the murderer is debarred from succeeding to the estate of the murdered person. When *Vedanaya Mudaliar* v. *Vedammal*[8] came up before the High Court at a later stage (I. L. R. 31 M. 100) *Sankaran Nair* J. referred to the earlier decision and said: 'That question, therefore, is not open to us for consideration.' This, of course, does not warrant any inference as to what the learned Judge would have held if the question were open. The decision of Sir *Subrahmanya Aiyar* and *Boddam* JJ. was based on the rule of 'justice, equity and good conscience' which, they held, was applicable because the point was 'untouched by the Hindu Law.' This view has been commented on at length in 15 M. L. J. 163 The learned Judges

1. (1906) I. L. R. 28 A. at p. 541.
2. (1907) I. L. R. 34 C. at p. 746.
3. (1893) I. L. R. 15 A. 15.
4. (1904) I. L. R. 27 A. 16.
5. (1893) I. L R. 21 A 238.
6. (1885) I. L. R. 13 C. 21.
7. (1888) I. L. R. 15 C. 717.
8. (1904) I. L. R. 27 M. 591.

of the Bombay High Court seem to doubt the applicability of the rule of justice, equity and good conscience in the circumstances of the case.

Bhagwan v. Warubai.—I. L. R. 32 B. 300.—Besides questioning the authority of Balambhatta and Nanda Pandita and showing how Balambhatta's order of succession involves a 'sweeping change' in that of the Mitakshara, the learned Judges also point out that the decision of *Westropp* C. J. in *Sakharam Sadashiv* v. *Sitabai*[1] is erroneous even according to Balambhatta. They next endeavour to show, as a matter of interpretation, that Vijnanesvara could not have meant 'brothers' to include 'sisters.' The last question dealt with is the *place* of the sister in the line of inheritance according to the Mitakshara. That she *is an heir*, the learned Judges accept as settled law. But in discussing her place, they do not merely rely on the Vyavahara Mayukha but seek to justify it according to the Mitakshara, by pointing out that she is not only a *Gotraja Sapinda* by reason of her birth, but also, in spite of her marriage, continues in a sense to be a *Samanugotra*. This is a new aspect of the case for the 'sister,' which deserves consideration, though its result will be to bring the sister in among the agnates and not, as the Madras High Court has done, among the cognates or *Bhinnagotra Sapindas*. We may here point out that, judged by the test of competency to perform the obsequies of the propositus, the sister will, according to the Dharma Sindhu and the Nirnaya Sindhu, come in after the brother's son. But of course the competency or obligation to perform the obsequies does not by itself, as for instance in the case of the daughter-in-law, *create a right* of succession.

SUMMARY OF ENGLISH CASES.

Johnson v. Kearley. [1908] 2 K. B. 514. (C. A.).]

Principal and Agent—Direction to buy from A as broker—Agent buying from A, treating A not as broker but as seller—No right to indemnity.

If the principal orders his agent to buy stocks in open market through *A*, broker and the agent buys the stocks from *A*

1. (1879) I. L. R. 3 B. 353.

treating him as seller, and not as broker, the agent does not conform to the directions of the principal who is, therefore, entitled to repudiate the transaction and the agent is not entitled to any indemnity, the reason being that if *A* is treated as broker he becomes an agent of the principal and must sell the shares for exactly the same value as he bought them and cannot gain for himself any secret profits; whereas, if treated as seller, he would be entitled to sell it as he likes and make a gain.

Per *Farwell* L. J. (*dissenting*).—If the agent buys from *A* at a reasonable price, which will include *A's* cost price, and his usual or reasonable brokerage, which the principal must know he must pay in any case, the agent does not exceed his authority and is entitled to indemnity.

Plumpton v. Burkinshaw. [1908] 2. K. B. 572 (C. A.).

Lunatic, not so found by inquisition—Committee—Lunatic's business carried on by, under Court's orders—No personal liability of Committee.

A person appointed by Court as Committee of a lunatic, not so found by inquisition, and carrying on the business of the firm of the lunatic under the Court's orders, does not, in the absence of any evidence to the contrary, incur any personal liability to the customers of the firm though he carries on business in the firm's name, as he is merely the agent of the lunatic by appointment of the Court.

Leal and Edgelow v. Kingston. [1908] 2. K B. 579 (C.A.).

Practice—Two plaintiffs—Order to make better affidavit—Refusal of one plaintiff—Right of other plaintiff to demand obedience by attachment.

Even after dissolution of a firm, " one of several partners has a clear right to use the name of the other partners for the purpose of bringing an action to recover a debt due to a firm on giving his partners (who are unwilling to sue) an indemnity against costs. * * * .One of two co-plaintiffs has the right to apply for an order of attachment against his co-plaintiff for non-compliance with an order requiring the plaintiffs to make an affidavit of documents. "

Marecco v. Richardson. [1908] 2. K. B. 584 (C. A.).

Limitation—Acknowledgment—Payment by cheque—Cashing cheque later on by agreement—Whether the new period of limitation arises from the date of cashing.

"Payment by a cheque (or bill) has always been considered to be a conditional payment." The reason why a part-payment takes a case out of the Statute (of Limitation) is that it is evidence of a fresh promise. The promise must be considered as having been made when the bill was given and not when it was paid, though by agreement of parties the cheque or bill was to be presented for payment only at a later date as "the payment relates back to the time when the cheque or bill was given." Therefore the starting point for the new period of limitation afforded by the issue of the cheque or bill is only from the date of its issue and not of its payment, for on the date of actual payment by the banker or acceptor there is no fresh promise on behalf of the debtor.

Hartley v. Rochdale Corporation. [1908] 2. K. B. 594.

Highway—Injury to, caused by A—Passive neglect of highway authority to repair—Damage to B going on the highway—Liability of A.

"Where an injury is occasioned by the joint result or the compound result of two torts committed one after the other, the original tort-feasor, as a general rule, is not liable, because, but for the second tort the injury would not have happened; but as far as I am aware there is no authority for saying that a non-actionable wrong such as the passive neglect of a highway authority breaks the chain of liability. If a man does that which obstructs a highway he is liable for the consequences of an injury sustained by somebody lawfully passing on the highway, even though there was time for the highway authority to have removed that obstruction and though the highway authority neglected to remove it."

Hales v. Kerr. [1908] 2. K. B. 601.

Evidence—Admissibility of—Acts of continuous neglect—Suit on a similar negligent act.

The fact that two others were negligently shaved by the defendant, a barber, with appliances in an insanitary condition, and

so got contagious diseases, is evidence to prove the defendant's negligent way of shaving, in an action for damages by the plaintiff who also got contagious diseases as the result of shaving in defendant's shop, the alleged negligence in the case of the plaintiff not being an accident or isolated act or omission but a dangerous practice carried on by the defendant.

Boger v. Boger. [1908] P. 300.

Divorce—Adultery with a foreigner—Necessity to serve the summons on the foreigner though not subject to jurisdiction—Clearing conduct.

In divorce cases, when adultery in alleged to have been committed with a foreigner who is not subject to the Court's jurisdiction, notice of the action must be given to him to give him an opportunity of clearing himself.

The King *v.* Tate. [1908] 2 K. B. 686 (C. Cr. A).

Jury—Misdirection—Accomplice's evidence—No corroboration—Omission to direct Jury as to the necessity of corroboration.

Although "there is no definite rule of law that a prisoner cannot be convicted on the uncorroborated evidence of an accomplice" the practice to that effect "has obtained so much sanction from legal authority that it deserves all the reverence of law, and a deviation from it in any particular case would be justly considered of questionable propriety," and an omission to warn the Jury not to convict on such uncorroborated testimony is such a misdirection as to entail the quashing of a conviction based thereon if in fact the appellate Court finds that there is no corroboration. The silence of the prisoner, *i.e.*, the absence of an indignant repudiation, when formally charged of the offence soon after the occurrence, may, in some cases, be a corroboration.

Toal *v.* North British Railway Company. [1908] A.C. 352.

Negligence—Facts sufficient—Railway Company.

In an action for damages by a passenger against a Railway Company the averments of the plaintiff were "that while standing on the platform he was struck and injured by an open carriage door, that it was the duty of the defendants and the invariable

practice of Railway Companies to close the doors of compartments before a train was allowed to leave the station, but this the defendants negligently failed to do on the occasion of this accident." *Held*, the facts set out were sufficient for a Jury to infer negligence from.

Dick *v.* Andsley. [1908] A. C. 347.

Discretion to trustees—Indefiniteness—Charitable Trust.

A testator after making certain specific dispositions, gave the residue to certain trustees, giving them full power to at any time or times as and when the residue becomes available to pay over or divide the residue or portions of it amongst such local or Scotch Charitable Institutions as they may select, at such time, in such manner or in such proportions, all as they in their absolute discretion may deem proper." The trustees were also to have full powers of realisation, investment, management and division, as if they were beneficial owners.

Held: the trustees had no option to apply any part otherwise than to charitable purposes. The words 'part or parts' referred to a time when distribution became practicable. There no indefinite postponement either. Even if there were some indefiniteness, the administration is always subject to the control of the Court if there was maladministration, and the will could not be set aside merely on the ground of indefiniteness. The gift in favour of charity was perfectly good.

Larsen *v.* Sylvester & Co. [1908] A. C. 295.

Charter-party—Construction—'Ejusdem generis' principle.

A charter-party exempted the parties from all liability arising from "frosts, floods, strikes * * * and any other unavoidable accidents or hindrances of what kind soever" beyond their control delaying the loading of the cargo. A block of steamers waiting their turn delayed the shipping.

Held: it was within the exemption. The words "what kind soever" taken along with the fact that the specified hindrances did not come under one and the same genus excluded the application of the principle of *ejusdem generis*. In cases like these "you have to regard the intention of the parties as expressed in their

language, and words such as these—'hindrances of what kind soever'—are often intended to mean exactly what they say. It is impossible to lay down any exhaustive rules for the application of the doctrine of *ejusdem generis*, but I agree with *Fry* L. J. that there may be great danger in loosely applying it. It may result, as he says, 'in giving not the true effect to the contracts of parties but a narrower effect than they were intended to have.'"—Per *Loreburn* L. C.

Evelyn Vicountess De Vesci *v.* O'Connell.

[1908] A. C. 298.

Construction of Statutes—Object of the Act—Strangers not to be affected.

Two persons *A* and *B* were owners in severalty of two lots of land which originally formed one property and were subject to one entire fee farm rent. At the time of the severance of the two lots there was an arrangement that lot *A* should indemnify lot *B*, the right of indemnity ranking next in priority to the landlord's charge. To this arrangement the landlord was no party. The occupying tenants of lot *B* purchased their holding with State-money. In accordance with statutory provisions in that behalf, the head-rent is apportioned and the amount thrown exclusively on the item purchased, is compulsorily redeemed by the application of a portion of the purchase-money. But for S. 33 of the Incumbered Estates Act (Ireland) 1849, the payment not having been at his request and being only a voluntary outlay the tenant of lot *A* would not have been bound to recoup the tenants of lot *B*. To obviate this result S. 33, Cl. (4) provided that "the person entitled to the purchase-money shall be entitled to the proportion of the rent charge so redeemed in like manner as if he had purchased the same."

Held: the Act did not affect the landlord's priority. "The words of the section are to be construed to effect the purposes of the Act and not to affect parties whom it was not the purpose of the Act to touch." (*Loreburn* L. C.). "The process vulgarly described as 'robbing Peter to pay Paul' is not a principle of equity, nor is it lightly to be attributed to the legislature, or as Lord *Ashbourne* put it even 'a statute may be construed contrary to its literal meaning when a literal construction would result in a

gross injustice, contrary to what must have been the purpose and object of the provision.' "

Lodge Holes Colliery Company, Ltd. *v.* Mayor of Wednesbury. [1908] A. C. 323.

Action by local authority for subsidence—Damages—Principle of assessment.

This was an action by a local authority against certain mine owners whose working caused a road to subside. The local authority restored the road to the old level and sought to charge the mine-owners with the cost of the same. An equally commodious road could have been made at a less cost but on a lower level.

Held: the plaintiffs were entitled only to this latter sum. They were not entitled to raise the road to the old level, cost what it might, and whether it was more commodious to the public or not. Even those who have been wronged must act reasonably, however wide the latitude of discretion that is allowed to them within the bounds of reason.

Kydd *v.* Watch Committee of City of Liverpool. [1908] A. C. 327.

Construction of Statutes—Context material.

"The process of reasoning that because one set of words means one thing in one context, other words or the same words in a different context must necessarily mean the same thing, is often vexatious and fruitless."—Lord *Loreburn* L. C.

Anderson *v.* Marten. [1908] A. C. 334.

Policy of insurance—Total loss, whether at capture or condemnation by Prize-Court.

A neutral ship was captured by the Japanese as carrying contraband of war, and while being navigated towards a Prize-Court, was wrecked and became a total loss by the perils of the sea. By this time the period of insurance also expired. Subsequently she was condemned by a Prize-Court. The policy excepted risk of total loss by capture.

Held : the total loss by capture took place on the date of the capture by the Japanese and not on the date of the condemnation by the Prize-Court.

Blake *v.* Bayne. [1908] A. C. 371.

Administrator, duties of—Next of kin, rights of solicitor—Fiduciary relation.

Plaintiffs and their eldest sister (the administratrix) were the sole next of kin of their deceased mother. The defendants were a firm of solicitors. They had acted on some occasions for the plaintiffs' mother, but there was nothing to show that she ever treated them as her confidential advisers. They acted as solicitors also for their sister and procured the letters for her. When requested, they offered to stand as sureties on payment of a certain premium (which was, however, less than what certain companies who made it their business, would stand surety for) and on the plaintiffs giving a guarantee bond to indemnify them for the acts of their sister as administratrix. By the time the letters were actually got all the debts of the mother had been paid. From the conduct and admissions of the plaintiffs it was clear that they committed the management of the property to their sister. Some time after, with the concurrence of the plaintiffs, she indulged in some speculations which resulted in a heavy loss. The plaintiffs then sued the defendants on the Administration Bond for the losses sustained by reason of their sister's speculations.

Held :—The indemnity bond was a complete answer to the claim. The defendants were not the solicitors of the plaintiffs and as such stood in no fiduciary relation towards the plaintiffs and owed no duty to them. The taking of a premium did not, under the circumstances, amount to any personal misconduct on their part.

Held also :—The misconduct, if any, was the misconduct of the sister, not as administratrix but as a manager acting on behalf of the plaintiffs and with their consent. In the words of *Cairns* L. C. " the rule of law or the rule laid down by the statute which requires the conversion of an intestate's estate into money is a rule introduced simply for the benefit of creditors and for the facility of division * * * * As regards the substantial

proprietorship, the right of the next of kin remains clear to every item forming the personal estate, subject only to those paramount claims of creditors—*Cooper* v. *Cooper*.[1] " Subject to the payment of debts, the property belonged to the three sisters equally, and without their consent it was neither the duty nor the right of the administratrix to convert the estate into money for division or investment.

Macintosh v. Dun. [1908] A. C. 390.

Communication for profit—Defamation—No privilege.

The defendants carried on a business which consisted in "obtaining information with reference to the commercial standing and position of persons and communicating the same to subscribers on confidential enquiry on their part" and, in response to an inquiry so made, made a communication defamatory of the plaintiff.

Held :—The defendants were liable in damages. The protection which the law throws around communications made in legitimate self-defence or from a *bona fide* sense of duty should not be extended to communications made from motives of self-interest by persons who trade for a profit on the characters of other people. It is only right that those who engage in such a business touching so clearly very dangerous ground should take the consequences if they overstep the law.

In re **Jewish Colonial Trust, Limited.** [1908] 2 Ch. 187.

Companies (Memoranda of Association) Act—Alteration of objects—Principles for the Court to act upon.

Under the Companies (Memoranda of Association) Act 1890, (53 & 54 Vic. C. 62) the Court has jurisdiction to confirm the alteration of the objects of the Company, if the alteration is for one of the purposes coming within S. 1, Sub-S. 5, and the Court is bound to confirm such alteration if the alteration is fair and equitable between the various classes of share-holders and if all the creditors have either consented, or been paid, or secured. It is not part of the Court's business to determine the wisdom of the course adopted by the Company in the management of its affairs.

1. (1874) L. R. 7 H. L. 53.

In this case, however, the Court refused to sanction the alteration of the Memorandum of Association by restricting its operations to certain local area on the ground that the Council in whom the management vested, had the power to so restrict its area in practice, and that the vast majority of the shareholders representing over $\frac{3}{4}$ of the share capital had given no indication of their wishes on the subject.

(*Cf.* Companies (Memorandum of Association) Act XII of 1895, S. 5 & 7.)

Metropolitan Water Board *v.* Solomon. [1908] 2 Ch. 214.

Construction of Statutes—Private rights not affected—Lease-hold interest vested in Metropolitan Water Board—Right of re-entry not taken away.

A lease-hold estate liable to determine on alienation without the consent of the landlord, belonging to the Grand Junction Water Works Company became vested in the Metropolitan Water Board by force of the provisions of the Metropolis Water Act of 1902. The Board was empowered under the Act to sell, assign or underlet.

Held: notwithstanding, that they were not entitled to alienate so as to deprive the defendants of their right of re-entry on alienation without consent. The burden lies on those who seek to establish that the Legislature intended to take away the private rights of individuals to show that by express words or by necessary implication such an intention appeared; if no compensation is given it affords a reason, though not a conclusive one, for thinking that the intention of the Legislature was not that the thing should be done at all events but only that it should be done if it could be done without injury to others.

In re **Sharp-Maddison *v.* Gill.** [1908] 2 Ch. 190.

Dominant intention to benefit class—Imperfect enumeration.

A testator gave his residuary estate upon " trust for John Gill, Edgar Gill, the three children of Sara Mitchell and the six children of Samuel Okey by his first wife in equal shares." At the date of the will and at the death there was only one of the six children of Okey living.

The dominant intention being to benefit the children of Samuel Okey whatever their number, the Court, rejecting the inaccurate enumeration, divided the property equally among the six people entitled, including the one child of Okey and five others.

[The judgment of *Joyce* J. in (1908) 1 Ch. 372 confirmed.]

Burgis *v.* **Constantine.** [1908] 2 K. B. 484 (C. A.)

Ship—Bare trustee of plaintiff's shares in—Signature by, in a blank form—Filling up of the blank form as a mortgage by the defendant—Use of money advanced for mortgage by bare trustee—Nullity of mortgage.

A bare trustee of plaintiff's shares in a ship signed at his agent's instance a blank form which was afterwards, without his knowledge, filled up by the defendant as a mortgage, and the money advanced thereon by the defendant was used by the bare trustee for his own purposes.

Held in suit to set aside the mortgage that (1) under the circumstances the mortgage was not duly executed and it was a nullity; (2) there is no estoppel in favour of a person who knew the truth ; (3) the defendant was not entitled to a charge on the shares for the money advanced and (4) the mortgage was liable to be set aside.

JOTTINGS AND CUTTINGS.

GOVERNMENT OF MADRAS,
REVENUE DEPARTMENT.

Order.—No. 2475, *Revenue, dated 4th September* 1908.

Finance No. 83. } Communicated to the Board of Revenue.

2. His Excellency the Governor in Council is pleased to delegate to the Board of Revenue and Collectors of Districts the power to allow refunds or renewals of spoilt or useless non-judicial stamps in cases in which holders of such stamps have, without any fraudulent motive, been unavoidably prevented from making application within the period prescribed by law, provided that application is made within two years from the date of purchase of the stamps or from the date on which they were spoilt or rendered useless

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Counsel's Fees and ' Disbursements ':—The summary course recently taken by the Divisional Court with a solicitor who had received advances for counsel's fees from his client, but had failed to apply them to the discharge of the ' honourable obligation ' on the faith of which counsel had done their work has been followed by a decision of the Court of Appeal which will tend to strengthen this obligation by even more than the bond which one of the Judges declared in a leading case was the only means by which such a debt could be enforced. In *Sadd* v. *Gribbin*, last week, the question arose as to who was liable for the cause of taxation of a solicitor and client-bill of costs, the result depending on whether or not the counsel's fees, which had been included in the bill, were to be regarded as disbursements, though they had been paid when the bill was delivered. It was contended, in support of the appeal, that such fees could only be included in a bill of costs under the head of disbursements, and that disbursements meant money which had been actually paid at the time when the bill was delivered and not, as was claimed to be practice, matters which the solicitor was merely under some liability, to pay. In delivering the considered judgment of the Court, Lord Justice FARWELL refered to an old case before Mr. BARON PARKE, in which that learned Judge said: " We never entertained any doubt that an attorney can charge for counsel's fees which have not been paid ; in point of law they are gratuities : and as he has not paid them, with respect to them he is not a farthing out of pocket." And (Lord Justice added) : "It is equally clear that a solicitor cannot properly accept payment of the bill unless he has paid the alleged disbursements ; and if he did so he would run considerable risk of being struck off the Rolls." By delivering his bill, the solicitor alleges that any counsel's fees therein set out as disbursements have, in fact, been paid, and he is bound by that statement, so that if it is shown to be incorrect the items cannot be allowed for the purposes of taxation. " For such allowance would enable him to turn an amount which, when the bill was delivered, was a liability not enforceable at law into an actual payment." The Court, therefore, held in the interests of honesty and in order to remove temptation that any sums claimed in a bill as disbursements, and not paid before its delivery, must be disallowed ; and the decision is to be welcomed as a distinct aid to the recognition of the 'honorable obligation' on which counsel undertake their work on behalf of their professional clients.

The Ethics of Advocacy :—Of more than usual interest to the English lawyer will be the fourth coming meeting of the American Bar Association. A Committee of the Association has drafted what purports to be a complete code of professional ethics, and the discussion of these proposed canons, which are 32 in number, will be the main business of the meeting. One of the draft rules is quite inconsistent with the traditions of English Bar. "A lawyer may counsel and maintain only such actions and proceedings as appear to him just. His appearance in Court should be deemed equivalent to an assertion, and on his honour that in his opinion, his client is justly entitled to some measure of relief." The observance of such a regulation would, of course, be quite incompatible with impersonality that belongs to the English Advocate. "A man's rights," said Lord BRAMWELL, "are to be determined by the Court, not by his Advocate or Counsel." It is for want of remembering this that foolish people object to lawyers that they will advocate a case against their own opinions. A client is entitled to say to his counsel; "I want your advocacy, not your judgment. I prefer that of the Court." Lord HALSBURY has expressed a similar view. He has described the contention that "an Advocate is bound to convince himself by something like an original investigation that his client is in the right before he undertakes the duty of acting for him" as ridiculous, "impossible of performance, and calculated to lead to great injustice." The rule that an advocate ought not to express his personal opinion in a criminal case has often been insisted upon. Serjeant SHEE's expression of belief in the innocence of PALMER, the Rugeley poisoner, drew a strong a protest from Sir ALEXANDER COCKBURN, who remarked that the counsel for the defence "had better have abstained from making any observations which involved the assurance of his own conviction." JOHNSON, when asked by BOSWELL whether a lawyer ought to support a cause which he knew to he bad replied :—"Sir, you do not know it to be good or bad, till the Judge determines it." That is really the conclusion of the matter. Much injustice would be done if the character and eminence of a counsel were always to be regarded in determining the justice of his client's cause, and this would be the inevitable result of the rule which the American Law Association is to be asked to adopt.

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The Legal Mind in Politics.—The recent discussion in Parliament on the King's visit to Russia furnished a striking exemplification to the workings of the legal mind in dealing with political questions. Mr. KEIR HARDIE, having bluntly charged the CZAR and his Ministers with responsibility for the recent atrocities in Russia was threatened with suspension by the Deputy Speaker if he did not withdraw the offensive words. The Prime Minister intervened with the suggestion that it was not out of order " to describe a particular set of facts compendiously as atrocities or atrocious or a series of crimes or what we hold to be a series of crimes" and the only point being whether in describing the responsibility of a Foreign Government he should apply the term 'atrocious' or 'atrocities' the honourable member might reasonably respond to the appeal to withdraw and 'distinguish' between the two things. The honourable member availed himself of the lawyer-like suggestion, and the debate was allowed to proceed. Mr. ASQUITH's refinement on 'atrocious or atrocities' recalls the classical instance recorded in BUSCH's Diary of a distinction made by his hero, BISMARCK, in his law-student days at the University, which saved the future Chancellor from something worse than suspension. 'I remember,' said BISMARCK, 'at Gottingen I once called a student a " dummer Junge (silly youngster) the recognised form of offence when it is intended to provoke to a *duel:* On his sending me his challenge, I said I had not wished to offend him by the remark that he was a silly youngster but merely to express my conviction.' The legal habit of drawing fine distinctions is worth a great deal, after all, in the rough-and-tumble of practical life and politics.

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Disclosure of Amount Paid into Court.—The rule that when an action is tried with a Jury no communication shall be made to them until after the verdict is given, either of the fact that money has been paid into Court or of the amount paid in, is founded on good sense. If the payment be made with a denial of liability, the Jury's knowledge that the payment has been made might prejudice a defence which, notwithstanding the defendant's willingness at an early stage of the action to put an end to the litigation may be a perfectly good one. Moreover, knowledge of the fact that a certain sum has been paid into Court would

often induce a sympathetic Jury to award something more, however adequate the sum might be. Thus the plaintiff, relying on this tendency of Juries might, but for this rule, be tempted to go on with the action, instead of taking the money out of Court in satisfaction of his claim. The inclination of the Judges is to enforce the rule strictly, and if it be violated by one of the parties, the result will probably be that the Judge will discharge the Jury, and that a second trial will be necessary. A few days ago, in reporting the proceedings in an unfinished libel action, a leading London newspaper mentioned the fact that money had been paid into Court, and Mr. Justice JELF thought it necessary to warn newspapers not to put into their reports during the progress of a trial matters which must not be disclosed in court. There is no reason to think that in this instance the report had the slightest effect on the verdict, but it is easy to conceive circumstances in which such a public disclosure might lead to an indirect violation of the rule; and the Judges have undoubtedly the right to prevent anything which might interfere with the course of Justice under the rules.

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Promise to pay Bets.—The policy of the Gaming Act, 1845, is to prevent betting transactions being made the subject of actions. It did not, however, make betting illegal, and, therefore, Lord ROMILLY held nearly 40 years ago, in *Babb* v. *Yelverton* that a bond for the payment of a sum in respect of racing debts given in order to avoid the consequences of not having paid them, was supported by good consideration. The decision has been followed in other cases; for instance by Mr Justice BUCKLEY in *In re. Browne.* In *Hyames* v. *Stuart King*, decided a fortnight ago, the facts, put shortly, were that the defendants, who had given the plaintiff a cheque in payment of Bets, wishing to prevent the presentation and dishonour of the cheque, made a payment on account to the plaintiff, and promised to pay the balance if the cheque were held over. Lord Justice FLETCHER MOULTON wanted to hold strictly to the policy of the Gaming Act. A promise to pay a sum equal in amount to a bet, the consideration being a promise not to make a default in payment known, seemed to his Lordship no better than a promise to pay a bet. The consideration, he said, was colourable, the real intention of the parties being that the bet should be paid. Logically there is much to be said for

this view, for under the law, as declared in *Babb* v. *Yelverton*, the loser of a bet may, by a little judicious pressure, be forced to convert it into a debt which the law recognises, thus affording an easy means of evading the Gaming Act. The other members of the Court, however, considered it too late to overrule *Babb* v. *Yelverton*, especially as this would seem in effect to be declaring betting transactions to be illegal, and therefore to be going beyond what the legislature intended.—*The Law Journal.*

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During the recent Flower Show in the Temple (says *the Pall Mall Gazette*) a Bencher of an Inn was showing a guest the pictures and portraits of the society. "That," said he, "is, JEFFREYS. We are rather proud of him, as he gave us our organ." "Really !" was the answer. "The only connection I ever heard that he had with an organ was that he made many a *vox humana* stop."

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Retrials of Murder Cases.—It is stated that the prisoner in the Bournemouth murder case, in which the Jury at Winchester have disagreed, will not be tried again till November at the Winter Assizes. Even for our circuit system (says the *Pall Mall Gazette*) this is pretty bad. It cannot be said that no man about whom a Jury disagree should be tried again nor that some interval should not elapse between the two hearings, but it is certainly a scandal that this man should remain five months longer untried in prison, for nothing but organisation is wanted to make the interval as short as is thought necessary. It is true that other charges not on bail have occasionally to be delayed in this way, but the suspense in the case of a trial for life is so peculiarly shocking that no one would complain if reform was begun in second trials for murder by some special arrangement. For example the Judge might return at an early date to re-try the case. Or, possibly, 'PALMER'S' Act might be utilised and the case tried at the Central Criminal Court. It is true that the statute has only been put in force when there was reason to believe that, owing to local excitement or prejudice,—such as existed in the case to which it owes its origin—a fair trial could not be had in the country. But the words are 'when it is expedient to the ends of justice.' Surely it is so expedient that prisoners under the shadow of the gallows should be put out of their misery. Why should the Court of Criminal Appeal not have the power of saying when and where this man shall be re-tried?

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Counsels and New Trials.—His Honor Judge BOMPAS, at the Outleg County Court on June, 3, made some comments on the non-appearance of counsel in an application for a new trial. He remembered, he said, that when he was a young man at the Bar it was only on a chance of one of the older men being busy that he got his chance of being heard. He did not think it was good either for the public or the profession that no chance should be given to the younger men. The 'upper' men ought not to think that everything must be done by them. If they could not appear they ought to instruct younger men and give them a chance. He added that he was very nearly left in a big hole at Bradford the previous day. There were some very good young men at Bradford, and if the older men found that they could not do the work, they ought to hand over their briefs to younger men.—*The Law Journal.*

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A Lawyer on legal Ethics.—Some time ago Governer HUGHES of New York raised a standard for lawyers that might be considered rather high for every-day humanity. He declared that no case could be taken against the public interest. But if that be counsel of perfection, the article of FREDERICK TREVER HILL, a New York lawyer, and author of note, in the current PUTMAN'S on legal tuckery and the disrepute into which the profession is falling, certainly demands nothing heroic of the average lawyer. It only asks him to refrain from twisting and turning the law in the interests of clients who do not deserve success. It asks him to be decently scrupulous and honest.

Mr. HILL does not hesitate to say that "lawyers are coming to be looked upon by fair and broad-minded men as defeaters of the law and mockers of its majesty." He attributes this to the fact that the typical modern lawyer is addicted to quibbling, trickery, and technicality, and cares nothing about justice, the merits of the case, or the real issues. He thinks it altogether proper to confuse the Court and get "reversible error" into the record by hook or by crook. He prepares snares and pit-falls for the Judge, and rejoices when the efforts are successful. He stretches statutes and solemnly argues for interpretations that he knows to be preposterous. He defeats honest claims, regardless of all moral considerations, so long as some loophole for the rascally client can be discovered. He deceives legislators into putting jokers into bills and then goes into Court to invalidate the acts fashioned by

himself with an air of innocence and good faith. He takes advantage of the failure of a plaintiff to observe the most technical and obscure rules of practice. He will "get off" criminals and turn them loose on the community on the most trivial and transparent pretext. And so on, to the end of the indictment.

Mr. HILL gives a number of striking illustrations, especially from criminal practice, to illustrate his charges. For example, a burglar who had robbed a railway station and killed a constable was once saved from conviction on a charge of murder in the first degree by the point that the statute in regard to burglary was so worded as not to cover railway stations, and that the constable had been guilty of trying to make an illegal arrest in interfering with the burglar.

Only lawyers can so well expose legal chicane and artful dodging, and it is to be hoped that Mr. HILL's example will be widely followed by the other conscientious members of the profession. As he says, lawyers should see themselves as others see them.—*Law Student's Helper.*

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Having Our Measure Taken.—There are few roads easily travelled in a successful lawyer's career. The success with which he meets is measured by the method of his practice. Senator CLIFFORD says : "Law is a jealous mistress and it doesn't pay to have her out with you." No profession boasts of more noble followers. No one is adored more than a lawyer who protects his own honor while defending or prosecuting for his client.

No lawyer owes his self-respect and family honor to save a client. Neither the law, nor the ethics of the profession demand it. The lawyer who holds his honor and character above reproach is the one who has a good clientage. You can defend a self-confessed criminal for a heinous crime or prosecute a claim for an unworthy complaint and yet be on the right side and receive a meritorious reward without stooping to ill-devised means.

The lawyer who is at the top round of the ladder in his profession is the one who understands the law to fit the case, instead of knowing how to fit the case to the law. The former takes hard work to solve, the latter is done by influencing witness and Jurors unlawfully and dealing with corrupt Judges. The former

are men of high standing in the community and the latter are spoken of with the same disgust that a degenerate criminal is spoken of.

The lawyer also sets the standard by which very near every other person is measured, whether in factory, office, shop or field. How many dedication, commencement, obituary, memorial and other orations have you noticed that did not have as their central figure its locality's leading lawyer. No other profession has given to its country, a HENRY, HAMILTON, JACKSON, WEBSTER, CLAY or LINCOLN. Why, then, shouldn't the most be made of it ?

A clientage is what one makes it. If a lawyer steps into your office, he need only see you receive and dismiss a client, until he knows all about your practice. Water, mops and dusters are more essential in getting clients than books. No one wants to enter a dirty law office and if he gets in once, he'll never be back to bother you. A client does not want you to be frivolous, but do business quick and right. You cannot fool him twice. Do not try it. You may never have another. Do not take his case just to get into Court, you may not stay long and never get in again. A good lawyer keeps his client out of Court and if he is in Court when employed, he gets him out.

There are a few guide posts to success strewn along the road which read, " Don't practice on the Court," " Stay out of practice" ' Don't cater to factions," "Keep office open and be there at office hours", " Don't loaf, clients come by chance," "Don't be on both sides of the fence at the same time."

Remember, there is no failure to the lawyer who follows the ethics of his profession and is honest with himself and fellow-citizen. ROY. E. RESSLE :—*Central Law Journal.*

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Humor of the Law.—" You allege cruel and inhuman treatment ?", inquiringly said the Attorney. " Just tell me please:"

" Yes, Sir," snapped the feminine and sharp-featured petitioner for a divorce. " Why, actually, whenever I try to start an argument with him, he grins and agrees with me."—*Puck.*

We think it a pity that our Judges do not stick to their business ; their personal opinions on ethics may be interesting to some people, their relatives, for instance, but the public are not bound

to regulate their conduct by a Judge's views on morality or ethics. Mr. Justice BUCKNIL last month severely criticised a husband who had obtained proof of his wife's adultery by breaking open a box and obstructing some letters. This strikes us as simply ridiculous. We admit that, as a rule, a husband should not break open his wife's boxes and obstruct letters, but circumstances alter cases. Does his Lordship consider it contrary to ethics to set a trap to catch a blackmailer or a receiver of stolen goods?—*Law Notes.*

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Barristers and Big Fees.—Is it not time the Bar Council turned their attention to a little domestic subject? We refer to the growing practice of barristers bragging about the big fees they receive. We are sick of "pars" in the papers that in the recent great case *Wylie* v. *Lewis*, Mr. PARCHMENT had 2,000 guineas and Mr. QUIBBLE, had 2,500 guineas and so on, *ad nauseam.* Of course we are told it is the naughtly clerks—those indiscreet persons. But a barrister always takes a precious good care to place his brief in a conspicuous position when it has a good fee marked on it. Our dentist does not write to the papers and tell the world what he charged for our new set of uppers. Our surgeon does not tell the world what he charged for—whatever nasty operation it was. Our friends, the barristers, have nobbled the press and become the biggest advertisers on earth. The phrase "largest fee ever received" reminds us of LIPTON'S advertisement of the "largest cheque ever paid for duty on tea." Bah! the whole business is bad form. The Bar council should see into it:—*Ibid.*

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What did Mr. Justice RIDLEY mean last month when he said: "There is many a quack who is as good as a doctor"? Truly an ambiguous remark to fall from Judicial lips.—*Ibid.*

CONTEMPORARY LEGAL LITERATURE.

The *Green Bag* (August 1908) reports a thoughtful address, by Mr. ROSCOE POUND on the 'Enforcement of Law.' Dealing with the current attitude towards the law, he observes that there are four chief causes of the difficulties which beset enforcement of law to-day in the United States: (1) Shifting of the standard of justice, shifting of the emphasis from property to person, shifting of the stand-point from individualism to collectivism, shifting of the end of law from the old so-called legal justice to the new social

justice —a process which is going on the world over; (2) Conflict between legal theory and judicial practice in the application of law; (3) Want of accord of the common-law theory of the relation of law to administration with the needs of the time, and (4) the backwardness of judicial organisation and procedure in America. His remarks on the first and second of the above cases deserve to be noted.

(i) The conservatism of law always makes it lag behind the ethical theory of the day. The older conception of law (*e. g.*, Blackstone's) was thoroughly individualist. The end of law was the protection of the individual. To day, moralists, sociologists and the more advanced among jurists have taken up the social conception. Society, not the individual, is the subject of all thought; but the individualist conception still dominates the law. Juries are conscious that the law in some way does not accord with the general sense of right. Judges feel that settled legal doctrines are leading them in particular cases to results that jar their feelings of right and resort to lax or equitable application of the law. The legal machinery thus loses precision, and accuracy of operation and lack of confidence in the legal system results. This, however, is the phenomenon of a transition and will disappear when the shifting to the newer standard of justice is accomplished.

(ii) The conflict between legal theory and judicial practice in the application of legal rules arises out of the shifting of the growing-point in our legal system from judicial decision to legislation. In the formative period of the common law, legal rules are flexible and their limits have to be determined as causes arise. But legislative law is imperative in form ,and, hard and fast. Certainty and uniformity of decision are its end, not the justice of the decision in any individual case. In its strict application, the human element is excluded, and the decision must rest on the logical application of the letter of the law. Such a mechanical operation of legal rules sacrifices the justice of the result in individual cases and is a perennial source of irritation. But the attempt of some judges to administer the law equitably leads to uncertainty. Judicial discretion and judicial law-making are points of contact between law and morals through which ethical considerations may be admitted in the application of law, but their scope has now been greatly narrowed. The conflict between *equity* and

certainty is unceasing in the progress of law. When the equitable element is dominant, practice soon crystallizes into hard and fast rules or docrines of equity, under pressure of the demand for certainty. When the legal element is dominant there is soon an equitable revolt or an insidious undermining in the interpretation or application of rules, under pressure of the demand for justice.

REVIEWS.

The Law of Copyright in Designs: By Lewis Edmunds, K.C., and Herbert Bentwich, LL.B., 1908. Sweet and Maxwell, Ltd., London. Price 25 *s*.—This is, in a sense, a second edition of Mr. Edmunds' work of 1895, but the book has been largely rewritten in consequence of the passing of the new Patents and Designs Act (1907). The subject is of great practical importance in England, but in India where there is very little of manufacturing and industrial activity, or such activity is only in the air, the law of Designs as contained in Act V of 1888 is but little availed of. The law here on such matters is a mere adaptation of the English law and a leading English treatise like the one now under notice is not without use in India. Looking over the history of the Statute Law of England with reference to copyright in Designs, one notes how the legislation there has proceeded in accordance with the progressive demands of industry and commerce, whereas in India the law has found a place in the Statute Book long before there was much need for it. The scope of the substantive law of Designs is comparatively small and the greater portion of the book is devoted to the discussion of the practice of Registration and the remedies for infringement. The long quotations from nearly all the leading cases are a specially useful feature of the book and in Part II the statute of 1907 is printed with a close commentary. The Designs Rules of 1908 are also given and the Appendices contain, among other things, the repealed Statutes, directions as to pleadings, &c., in actions, and detailed instructions to persons who wish to register Designs.

The Memorandum of Practice in Civil Cases : by W. G. Howard L.L. B., Trinity College, Dublin of the Middle Temple, Esq., *Barrister-at-law*. Second Edn. Published by Thacker Spink & Co., Calcutta. Price Rs. 2.—We commend this little

book to the notice of all apprentices-at-law and junior practitioners in the country. The points dealt with are all simple and may be regarded as elementary. But want of attention to the small details set out by Mr. Howard has *often* wrecked many cases.

The Provincial Insolvency Act: By A. P. Muddiman, I. C. S., Registrar of the High Court of Judicature at Fort William in Bengal, in its appellate jurisdiction: Published by Messrs. Thacker Spink & Co., Calcutta. Price Rs. 4-8-0.—This is a new annotation on the Provincial Insolvency Act. The Act has been subjected to a great deal of critical study by several annotators in this Presidency, not to speak of similar workers elsewhere. Mr. Muddiman of the Calcutta High Court has made his own contribution to the literature on the Act. There have been no decisions under it; yet numerous English precedents have been referred to, which must prove helpful to the practising lawyer. We commend the book to the notice of the profession.

Sohoni's Code of Criminal Procedure: By Dr. Swaminathan, Barrister-at-law, Madras, 6th Edition, published by Addison & Co., Madras. Price Rs. 16.—Mr. Sohoni's commentaries on the Code of Criminal Procedure have been found very useful, notwithstandingthe publications of more distingushed authors like Prin sep and Henderson of Calcutta. The arrangement of the matter under each Section and the distinguishing types employed render the work of the practitioner in hunting up references easy. But the work has been marked by no originality or critical insight, and the author of the 6th Edition has not, so far as we can judge, made any contribution in that direction. He says he has tried to afford all reasonable facilities "to stimulate the art of accurate thinking while on one's legs" for he proceeds to lament that the accomplishment is seldom exhibited in this country "even by the foremost men in the profession." But the learned editor has not condescended to tell us what those facilities are which he has afforded to enable a man to think accurately. If we put aside the exaggerated claims he makes for his book, we can recommend it as a useful publication. It is very well got up and reflects credit on the printers.

Butterworth's Ten Years Digest of Reported Cases (1898—1907) in 4 Volumes: Published by Butterworth & Co., 11 and 12 Bell

Yard, Temple Bar, London, Price £ 3.—These are days of legal encyclopœdeas and monumental digests. The four handsomely bound volumes of the Digest of ten years of English decisions are fit to adorn the shelves of every lawyer in large practice. As pointed out in the Publishers' Note, no pains have been spared to render the work easy to use as well as accurate and comprehensive.

Acknowledgments.

We beg to acknowledge receipt of the following publications :—

The Memorandum of Practice in Civil Cases : By W. G. Howard, LL. B., Trinity College, Dublin, of the Middle Temple, Esq. : 2nd Edition. Published by Thacker Spink & Co., Calcutta. Price Rs. 2-0-0.

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Bombay Law Reporter	Do.
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Central Law Journal	Do.
Chicago Legal News	Do.
Criminal Law Journal	Do.
Hindustan Review	Do.
Kathiawar Law Reports	Do.
Law Students' Helper	Do.
Law Students' Journal	Do.
Punjab Law Reporter	Do.
The Law Journal	Do.
The Lawyer	Do.